IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 28 OF 2002

Shri Krishnanath Baburao Naik,
Reduldo de Costa's Bldg.,
Margao. ... Appellant

versus

1. Dy. Collector(L.A.O),
   Panaji.

2. The Chairman,
   Goa, Daman & Diu Housing Board,
   Junta House, Panaji. ... Respondents.

Mr. R. G. Ramani, Advocate for the Appellant.

Mr. P. A. Kamat, Government Advocate for the Respondents.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 12TH JULY, 2004.

ORAL JUDGMENT(PER S.A.BOBDE,J.)

This First Appeal is against the Judgment dated 27th September, 2001, in a reference under Section 18 of the Land Acquisition Act. The Appellant had sought a reference to the Court since the Land Acquisition Officer had awarded compensation at the rate of Rs.6/- per sq. metre for the acquired land. The Appellant is said to have owned 22,308 sq. metres which was acquired in pursuance of a Notification dated

20th November, 1980. We are satisfied with the offer of Rs.6/- per sq. metre. Hence, this Appeal.

2. Mr. R. G. Ramani, learned Counsel for the Appellant submitted that the Award of Rs.6/- per sq. metre and the fact that it is upheld by the appellate Court is explicitly illegal and inadequate in view of the fact that in respect of a similar land, situated just 500 metres away the compensation that was awarded was Rs.50/- per sq. metre. The learned Counsel for the Appellant referred to the deposition of one Numene Souza who deposed that he owned paddy land. The Land Acquisition Officer had offered compensation for his land at the rate of Rs.35/- per sq. metre. In a reference, the Court had enhanced it to Rs.50/- per square metre. However, the High Court maintained the offer of the Land Acquisition Officer at the rate of Rs.35/- per sq. metre. Thereafter, the Supreme Court restored the Order of the Reference Court awarding compensation at the rate of Rs.50/-per sq. metre. The size of the land that was acquired was 68.87 sq. metres.

3. Mr. Ramani, learned Counsel for the Appellant urged that this Court should enhance the compensation to at least Rs.50/-per sq. metre, having regard to the fact that the present land is of greater

value on the ground that it is a mixed garden. Mr. Ramani, learned Counsel for the Appellant further argued that the acquired land had been converted into a non-agricultural land with a Sanad at Exh.30. He, therefore, asked for an enhancement on that ground. The learned Counsel referred to the deposition of the Appellant who claimed to have purchased the land under two Sale Deeds dated 31st February, 1980 and 8th January, 1981 in pursuance of an agreement executed earlier.

4. Mr. P. A. Kamat, learned Government Advocate for the Respondents strongly opposed the Appellant on both grounds. Firstly, according to the learned Government Advocate, the land in question is not at all similar and comparable to the land owned by Numene Souza whose matter went up to the Supreme Court. The learned Government Advocate referred to the deposition of R.W.1, S. R. Kurade, who stated that the land was purchased by the Goa Housing Board at the rate of Rs.5.50 per sq.metre for undeveloped land and Rs.9/- per sq. metre for developed land in the year 1978. According to the learned Counsel, therefore, there is no question of comparing the land to the property of Numene Souza which is 500 metres away. We find from the Judgment of the Reference Court, that this aspect has not been considered at all.

5. Next, Mr. Kamat, learned Government Advocate for the Respondents opposed the Appellant's contention that the land has been converted into non-agricultural land on the ground that the Sanad produced by the Appellant at Exh.30 is in respect of Survey No.11/1, whereas the acquired land is Survey No.11/0. This aspect is not in the evidence at all. The learned Government Advocate pointed out that this is due to the fact that a photostat copy of the Sanad was originally produced by the Appellant and, therefore, so cross-examination was made on this aspect. He submits that later on the certified copy was produced at a time when the cross-examination was over. A perusal of the Sanad on record thus shows that it is in respect of land Survey No.11/1 and not 11/0.

6. Mr. Ramani, learned Counsel for the Appellant submitted that it is the same land. We must make a note of the strange aspect in this case. The learned Reference Court has reproduced the contention of the Appellant's Counsel vide para 6 that the land in question is held by the Appellant as a tenant of the property.

7. Before us, Mr. Ramani, learned Counsel for the Appellant submitted that this is due to confusion of the Appellant. He has narrated the facts of the

other case which was on the Board on the same day. We are quite unable to accept this contention. If indeed, a serious mistake had crept into the Judgment of the Reference Court, the Appellant was duty-bound in law to approach that Court for the correction of the record.

8. Having regard to the three aspects enumerated above and being of the opinion that it is not appropriate for us to decide any of the three aspects in an Appeal, we consider it appropriate in the interest of justice to remand the matter back to the Reference Court for fresh decision in accordance with law in addition to any contention that may be raised by the parties. The Reference Court will decide the three aspects pointed out above.

9. In this view of the matter, the Appeal is allowed. The Judgment dated 27th September, 2001, is set aside. The matter is remanded back to the trial Court. Record and Proceedings be transmitted to the Reference Court forthwith. Both the parties shall be at liberty to adduce evidence.

S.A. BOBDE, J.

N.A. BRITTO,J.